

May 14, 2009

By Email and U.S. Mail

Mr. John H. Robertus
Executive Officer
California Regional Water Quality Control Board, San Diego Region
9174 Sky Park Court, Suite 100
San Diego, CA 92123-4353

**SUBJECT: COMMENTS FOR REVISED TENTATIVE ORDER NO. R9-2009-0002;
NPDES NO. CAS0108740**

Dear Mr. Robertus:

The City of Laguna Hills has reviewed the latest revised subject order dated March 13, 2009, along with the April 29, 2009 Tentative Updates, Waste Discharge Requirements for Discharges of Urban Runoff from the Municipal Separate Storm Sewer Systems (MS4s) Draining the Watersheds of the County of Orange, the Incorporated Cities of Orange County, and the Orange County Flood Control District within the San Diego Region (Tentative Order No. R9-2009-0002) (NPDES No. CAS0108740). The City of Laguna Hills as Co-Permittee, is providing further comments on the Revised Tentative Order prior to adoption and request that the issues in this letter be addressed.

City Staff submitted extensive comments on the initial Tentative Order on April 4, 2007, August 22, 2007, and January 24, 2008. While a number of our technical comments were acted upon by the Board Staff, several of our comments were not satisfactorily addressed. Moreover, additional problematic regulations have been added into the current draft, which will also be commented on.

The City of Laguna Hills is committed to improving storm water quality and protecting our natural resources, and believes that some of the specific regulations in the Tentative Order may adversely affect our ability to effectively deliver the water quality improvements that the Board and the City are seeking to attain. Some of the directives and provisions of concern are as follows:

- The current draft has removed "Urban" from the term "Urban Runoff". Runoff is a general and vague term and Permittees should not be on the hook to address all sorts of runoff. The goal of the NPDES permit is to control urban runoff, and this phrase should not be altered.

- Finding C.15 states that this Order is not intended to address naturally occurring pollutants or flows except where the MS4 has altered or concentrated those natural pollutants or flows. The City believes the nature of the MS4 is to concentrate flows, and if natural occurring pollutants enter the MS4, the Permittees should not be held accountable for these pollutants.

- In the current draft of the subject Order, landscape irrigation, irrigation water, and lawn watering, have been removed from the “Non-Storm Water exempt discharges” table in Section B.2. The Cities are currently working with water agencies to develop and implement control measures to reduce irrigation runoff into the MS4. The foregoing discharges should remain on the exempt discharges list in the proposed fourth term permit so that the co-permittees are given an opportunity to demonstrate the effectiveness of their efforts to reduce and eventually eliminate irrigation runoff into the MS4. Direct removal of these discharges from the exemption may have a negative impact on the progress the Cities are making on this issue. The City proposes the following alternate language be added, “The Co-permittees shall work with local water purveyors to implement measures in order to eliminate irrigation runoff.”

- Section D.4.e(2)b of the Tentative Order imposes new requirements that the Permittees conduct an investigation or document why a discharge does not require an investigation, within two business days of receiving dry weather field screening results that exceed action levels. This timeframe is not reasonable. The Board Staff has responded to this comment claiming that this section does not require a fully completed investigation; rather it requires the Co-Permittees to begin conducting an investigation. This clarification should be in the Tentative Order so the City is clear of the Board’s requirements.

- Section D.4.h.1 and 2 states that co-permittees must implement management measures and procedures to contain and clean up sewage spills. It also directs the co-permittees to implement a mechanism whereby they will be notified of all sewage spills. As the Water Districts regulate sanitary sewer overflows, the City would prefer this section be removed as to avoid duplicity of effort. However, if it is to remain, the City proposes the following language modification to Section D.4.h.2, “Each co-permittee must implement management measures and procedures to prevent, respond to, contain and clean up sewage from any such notification.”

- The Tentative Update document dated May 5, 2009 contains a new section F.1.d.(4)(c), which requires that LID structural site design BMPs to be sized and designed to ensure capture of the 85th percentile storm event for all flows from the development in accordance with Section F.1.d.(6)(a)(i) and Section F.1.h. This section should be modified to allow capture of the difference in volume between the 85th

percentile storm event for the pre-development condition and the 85th percentile storm event for the post-development condition. Moreover, the term “capture” implies retention, and this is not feasible everywhere due to site constraints. The term “capture” should be removed from the language, so that the Co-Permittees are given the flexibility to treat and release, where feasible.

- Section H.3 of the Order requires the submission of a “Municipal Storm Water Funding Business Plan” by the end of the permit term. The Plan would identify the long-term funding strategies for program evolution and funding decisions along with planned funding methods and mechanisms for Municipal Storm water Management. City Staff has stated its’ concerns on this section in both of the previous Tentative Order drafts and yet this section remains unchanged. Staff believes this provision is inappropriate, improper and unjustified. The City has consistently funded its Storm Water Management obligations and there is no evidence to suggest otherwise. Moreover, the City submits a Fiscal Analysis in its Annual reports, also known as Jurisdictional Urban Runoff Management Plans (JURMP or LIP). The Board Staff claims that the Business Plan is not subject to approval and does not restrict the Co-Permittees to the implementation of any of the methods in the plan. If that is the case, there shouldn’t be any need for the Business Plan. Furthermore, the mere existence of the requirement of a Business Plan in the Tentative Order makes it the purview of the Board regardless of the Staff’s comment. And, the Board should not work towards a funding mandate nor take any steps to involve itself in the Budget preparation of another governmental agency. The City’s budget is available for all to see as a public record and should suffice to respond to any staff concerns about funding commitments. This provision should be deleted from the Tentative Order.

The City appreciates your attention to our concerns with the subject draft Tentative Order, however, further revisions to the Tentative Order addressing the City and County comments are needed in order to carry out a more effective and successful Stormwater Program.

Sincerely,

Kenneth H. Rosenfield, P.E.
Director of Public Services

cc: Bruce E. Channing, City Manager
Chris Compton, County of Orange, PF&RD